

## **CALIFORNIA RESOURCES AGENCY**

### **NOTICE OF PROPOSED ACTION AMENDING GUIDELINES IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT June 2006**

The California Resources Agency ("the Resources Agency") is proposing to update certain guidelines implementing the California Environmental Quality Act ("CEQA"), which is found in sections 21000-21177 of the Public Resources Code ("PRC"), in order to reflect certain legislative changes to CEQA. These guidelines are promulgated in the California Code of Regulations, title 14, sections 15000-15387 (the "Guidelines"). This action consists of the adoption of amendments to and the repeal of existing sections of the Guidelines, and the adoption of new sections of the Guidelines, as described below.

#### **STATUTORY AUTHORITY**

PRC Section 21083 requires the adoption of the Guidelines to explain and implement CEQA. PRC section 21083, subdivision (f) requires the Resources Agency, in consultation with the Governor's Office of Planning and Research ("OPR"), to certify, adopt and amend the Guidelines at least once every two years.

#### **PROPOSED ACTION**

The proposed action clarifies and updates the Guidelines to reflect recent legislative changes to CEQA, specifically legislation: (i) amending sections 21083.9, 21090, 21091, 21151, 21151.4, 21151.8, 21151.9, 21157.6, and 21165 of the Public Resources Code; (ii) adding sections 21098, 21152.1, 21159.20-21159.26 of the Public Resources Code; (iii) amending sections 10910, 10911, 10912, and 10914 of the Water Code; and (iv) repealing section 10913 of the Water Code. The changes to the Guidelines proposed in this action are as follows:

Add Guidelines sections: 15155, 15190.5 and Article 12.5, which includes sections 15191, 15192, 15193, 15194, 15195, 15196.

Amend Guidelines sections: 15053, 15061, 15062, 15072, 15073, 15074, 15082, 15087, 15105, 15179, 15180, 15186.

Repeal Guidelines section: 15083.5.

#### **PUBLIC HEARING**

A public hearing is not scheduled. Any interested person or his or her duly authorized representative may request a public hearing, in writing, no later than 15 days prior to the close of the written comment period.

#### **WRITTEN COMMENT PERIOD**

Any interested person may submit written comments relevant to the changes in this action to the Resources Agency. Written comments must be received by the Resources Agency no later than 5:00 p.m. on July 31, 2006 in order to be considered. Written comments may be delivered, mailed, or transmitted by facsimile or electronic mail. Written comments should be addressed as follows:

Sandra Ikuta, Deputy Secretary and General Counsel  
The Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814  
Fax: (916) 653-8123

cc: Caryn Holmes, Staff Counsel  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814  
Fax: (916) 654-3843  
Electronic mail: [ceqa.rulemaking@resources.ca.gov](mailto:ceqa.rulemaking@resources.ca.gov)

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Resources Agency is proposing this action to update the Guidelines to reflect certain legislative changes to CEQA.

CEQA requires public agencies to review the environmental impacts of proposed projects, to prepare and review environmental impact reports (EIRs), negative declarations, and mitigated negative declarations, and to consider feasible alternatives and mitigation measures that would substantially reduce significant adverse environmental effects. As noted above, Section 21083 of the Public Resources Code requires the Secretary for Resources, in consultation with OPR, to periodically update the Guidelines. The Resources Agency reviewed the existing Guidelines and determined that in some cases, the Guidelines had not been updated to reflect legislative changes to CEQA that had been enacted during the period from 2001 through 2005. The broad objective of this proposed action is to clarify and update the Guidelines to be consistent with these recent legislative enactments that have modified CEQA. Any specific objectives are explained in the summaries below.

The changes proposed in this action will affect twenty-one sections of the Guidelines. The summaries set forth below describe the existing laws and regulations related to the changes proposed in this action and explain the effect of the proposed action.

The proposed action does not duplicate or conflict with any federal statutes or regulations. CEQA is similar in some respects to the National Environmental Policy Act ("NEPA"), 42 U.S.C. sections 4321-4343, but NEPA requires environmental review of federal actions by federal agencies while CEQA requires environmental review of state and local projects by state and local agencies in California. Moreover, although both NEPA and CEQA require an analysis of environmental impacts, the substantive and procedural requirements of the two statutes are different. Most significantly, CEQA requires feasible mitigation of environmental impacts, while NEPA does not require mitigation. A state or local agency must complete a CEQA review even for those projects for which NEPA review is also applicable, although Guidelines sections 15220-15229 allow state, local and federal agencies to coordinate a review when projects are subject to both CEQA and NEPA. Because a state or local agency cannot avoid CEQA review, and because CEQA and NEPA are not identical, guidelines for CEQA are necessary and do not duplicate the Code of Federal Regulations.

### **15053. DESIGNATION OF LEAD AGENCY BY THE OFFICE OF PLANNING AND RESEARCH**

Guidelines section 15053 describes the process that agencies may use to submit a dispute to OPR for resolution and designation of a lead agency.

The proposed amendments to subdivisions (a) and (c) of Guidelines section 15053, and the proposed addition of subdivision (b) to Guidelines section 15053, implement and make specific the provisions of Senate Bill ("SB") 648 (Chapter 267, Statutes of 2005), which amended PRC section 21165. As amended, PRC section 21165 defines the term "dispute" and provides that OPR shall not designate a lead agency in the absence of such a dispute. The proposed amendments to subdivisions (a) and (c) of Guidelines section 15053, and the proposed addition of subdivision (b) of Guidelines section 15053, reflect the amendments to PRC section 21165. Additionally, non-substantive changes to the numbering within this section are proposed.

The authority for the adoption of the proposed amendments and addition is PRC section 21083.

## **15061. REVIEW OF EXEMPTION**

Guidelines section 15061 describes when a project or activity is exempt from CEQA.

The proposed addition of subdivision (b)(5) to Guidelines section 15061 implements and make specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002). SB 1925 added PRC sections 21159.20-21159.26, which set forth statutory exemptions from CEQA for agricultural employee housing, low-income housing (affordable housing), and residential infill projects under specified circumstances. The proposed addition of subdivision (b)(5) to Guidelines section 15061 reflects the additional exemptions from CEQA provided due to the enactment of PRC sections 21159.21, 21159.22, 21159.23, and 21159.24.

The proposed addition of subdivision (e) to Guidelines section 15061 implements and makes specific the provisions of SB 1393 (Chapter 1121, Statutes of 2002), amending PRC section 21151. As amended, PRC section 21151 provides that a decision by a non-elected decisionmaking body of a local lead agency to certify an EIR, approve a negative declaration or mitigated negative declaration, or determine that a project is exempt from CEQA, may be appealed to the agency's elected decisionmaking body. The proposed addition of subdivision (e) to Guidelines section 15061 reflects the change in PRC section 21151 with respect to projects exempt from CEQA.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed additions is PRC section 21083.

## **15062. NOTICE OF EXEMPTION**

Guidelines section 15062 describes the use and required content of the notice of exemption when a public agency approves or determines to carry out a project that is exempt from CEQA.

The proposed amendment of subdivision (a) to Guidelines section 15062 clarifies the applicability of that section by a cross-reference to Guidelines section 15061. The proposed addition of subdivision (e) to Guidelines section 15062 implements and makes specific the provisions of Assembly Bill ("AB") 677 (Chapter 837, Statutes of 2003), which added PRC section 21152.1. PRC section 21152.1 requires a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The proposed addition of subdivision (e) to Guidelines section 15062 reflects the requirements set forth within PRC section 21152.1.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed amendment and addition is PRC section 21083.

## **15072. NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION**

Guidelines section 15072 describes a lead agency's obligations to provide notices of intent to specified recipients before the lead agency adopts a negative declaration or a mitigated negative declaration.

The proposed addition of subdivision (f) to Guidelines section 15072 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), which added PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, a notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern.

The proposed addition of subdivision (f) to Guidelines section 15072 reflects the requirements of PRC section 21098 with respect to notices of intent to adopt negative declarations or mitigated negative declarations.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed addition is PRC section 21083.

### **15073. PUBLIC REVIEW OF A PROPOSED NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION**

Guidelines section 15073 requires a state lead agency to provide a public review period when a negative declaration or mitigated negative declaration and initial study are submitted to the State Clearinghouse.

The proposed amendment to subdivision (b) of Guidelines section 15073 implements and makes specific the provisions of SB 648 (Chapter 267, Statutes of 2005), which amended PRC section 21091. As amended, PRC section 21091 specifies the time for commencing the public review period and the state agency review period for draft EIRs, proposed negative declarations, and proposed mitigated negative declarations, specifies how the state agency review period must be calculated, and specifies the time frame for the State Clearinghouse's distribution of CEQA documents.

The proposed amendment to subdivision (b) of Guidelines section 15073 reflects the changes to PRC section 21091.

The authority for the adoption of the proposed amendment is PRC section 21083.

### **15074. CONSIDERATION AND ADOPTION OF A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION**

Guidelines section 15074 describes the process by which a negative declaration or mitigated negative declaration should be considered and, if applicable, adopted by a decisionmaking body.

The proposed addition of subdivision (f) to Guidelines section 15074 implements and makes specific the provisions of SB 1393 (Chapter 1121, Statutes of 2002), amending PRC section 21151. As amended, PRC section 21151 provides that a decision by a non-elected decisionmaking body of a local lead agency to certify an EIR, approve a negative declaration or mitigated negative declaration, or determine that a project is exempt from CEQA, may be appealed to the agency's elected decisionmaking body. The proposed addition of subdivision (f) to Guidelines section 15074 reflects the change in PRC section 21151 with respect to negative declarations and mitigated negative declarations.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed addition is PRC section 21083.

## **15082. NOTICE OF PREPARATION AND DETERMINATION OF SCOPE OF EIR**

Guidelines section 15082 describes the consultation process (commonly referred to as “scoping”), including the use of a notice of preparation of a draft EIR, among a lead agency and responsible and trustee agencies where the lead agency is preparing an EIR that will be used by these agencies in reviewing and approving a project.

The proposed amendment to subdivision (a) of Guidelines section 15082 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), adding PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, a notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern. The proposed amendment to subdivision (a) of Guidelines section 15082 reflects the requirements of PRC section 21098 with respect to notices of preparation of an EIR.

The proposed amendment to subdivision (c)(1) of Guidelines section 15082 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), amending PRC section 21083.9. As amended, PRC section 21083.9 states that any scoping meeting conducted in the city or county in which a project is located pursuant to NEPA will satisfy the state scoping meeting requirement for projects of statewide, regional or areawide significance provided certain additional requirements are met. The proposed amendment to subdivision (c)(1) of Guidelines section 15082, reflects the changes to PRC section 21083.9. Non-substantive changes to the format and layout of subdivisions (c)(1)-(c)(3) of Guidelines section 15082 and non-substantive clarifying changes to the numbering were also made.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed amendments is PRC section 21083.

## **15083.5. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES [Repeal]**

The existing Guidelines section 15083.5 generally addresses analyses and determinations regarding water supply availability that must be undertaken by lead agencies for specified projects. The existing Guidelines section 15083.5 was based on SB 901 (Chapter 881, Statutes of 1995), which enacted, among other things, PRC section 21151.9 and Government Code sections 10910-10915. SB 901 was amended by SB 610 (Chapter 643, Statutes of 2001). Among other things, SB 610 amended PRC section 21151.9 of the Public Resources Code, sections 10910, 10912, 10915 of the Water Code, and repealed section 10913 of the Water Code. The proposed change would delete Guidelines section 15083.5 and replace it with proposed new Guidelines section 15155 to reflect the changes enacted in SB 610. Proposed new Guidelines section 15155 will be discussed below.

The authority for the adoption of the proposed repeal of this section is PRC section 21083.

## **15087. PUBLIC REVIEW AND DRAFT EIR**

Guidelines section 15087 sets forth procedures for public notice and public review of draft EIRs.

The proposed amendment to subdivision (a) of Guidelines section 15087 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), which added PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, a notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern. The proposed amendment to subdivision (a) of Guidelines section 15087 reflects the requirements of PRC section 21098 with respect to notices of availability of a draft EIR.

The proposed amendment to subdivision (e) of Guidelines section 15087 implements and makes specific the provisions of SB 648 (Chapter 267, Statutes of 2005), which amended PRC section 21091. As amended, PRC section 21091 specifies the time for commencing the public review period and the state agency review period for draft EIRs, proposed negative declarations, and proposed mitigated negative declarations, specifies how the state agency review period must be calculated, and specifies the time frame for the State Clearinghouse's distribution of CEQA documents. The proposed amendment to subdivision (e) of Guidelines section 15087 reflects the changes to PRC section 21091.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed amendments is PRC section 21083.

#### **15105. PUBLIC REVIEW PERIOD FOR A DRAFT EIR OR A PROPOSED NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION**

Guidelines section 15105 describes the time periods required for the public review of a draft EIR, proposed negative declaration, or mitigated negative declaration.

The proposed amendment to subdivision (c) of Guidelines section 15105, and the proposed addition of subdivision (e) to Guidelines section 15105, implement and make specific the provisions of SB 648 (Chapter 267, Statutes of 2005), which amended PRC section 21091. As amended, PRC section 21091 specifies the time for commencing the public review period and the state agency review period for draft EIRs, proposed negative declarations, and proposed mitigated negative declarations, specifies how the state agency review period must be calculated, and specifies the time frame for the State Clearinghouse's distribution of CEQA documents. The proposed amendment to subdivision (c) of Guidelines section 15105, and the proposed addition of subdivision (e) to Guidelines section 15105, reflect the changes to PRC section 21091.

The authority for the adoption of the proposed amendment and addition is PRC section 21083.

#### **15155. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES [New Section]**

The existing Guidelines section 15083.5 generally addresses analyses and determinations regarding water supply availability that must be undertaken by lead agencies for specified projects. The existing Guidelines section 15083.5 was based on SB 901 (Chapter 881, Statutes of 1995), which enacted, among other things, PRC section 21151.9 and Government Code sections 10910-10915. SB 901 was amended by SB 610 (Chapter 643, Statutes of 2001). Among other things, SB 610 amended PRC section 21151.9 of the Public Resources Code, sections 10910, 10912, 10915 of the Water Code, and repealed section 10913 of the Water Code. These amendments revised the requirements imposed on city or county lead agencies with respect to the development of a water supply assessment for specified types of projects and required the inclusion of the water supply assessment and other information in any environmental document

prepared for the project. Proposed Guidelines section 15155 implements and makes specific the provisions of SB 610 (Chapter 643, Statutes of 2001).

The proposed addition of Guidelines section 15155 reflects the amended PRC sections 21151.9 as well as the amended Water Code sections 10910, 10911, 10912, and 10914, and the repeal of Water Code section 10913, as they apply to a lead agency's obligations under CEQA.

The authority for the adoption of the proposed addition is PRC section 21083.

#### **15179. LIMITATIONS ON THE USE OF THE MASTER EIR**

Guidelines section 15179 specifies limitations on the use of a Master EIR. The proposed amendments to subdivisions (a) and (b) of Guidelines section 15179 implement and make specific the provisions of AB 2922 (Chapter 684, Statutes of 2004), which amended PRC section 21157.6. As amended, PRC section 21157.6 revises one of the limitations on the use of a Master EIR and allows a Master EIR that was certified more than 5 years prior to the filing of an application for the subsequent project to be used if the lead agency takes specified steps. The proposed amendments to subdivisions (a) and (b) of Guidelines section 15179 reflect the changes to PRC section 21157.6. The Resources Agency is also proposing to remove the discussion section that follows this Guideline because the proposed amendments make this discussion section outdated. These discussion sections are potentially sources of confusion, because it is not clear whether discussion sections are part of the Guidelines or have any legal effect. Therefore, the Resources Agency has decided to remove these discussion sections when the Guideline section to which they refer is changed. Additionally, non-substantive changes to the numbering within this section are proposed.

The authority for the adoption of the proposed amendments is PRC section 21083.

#### **15180. REDEVELOPMENT PROJECTS**

Guidelines section 15180 describes special environmental review considerations for redevelopment projects.

The proposed addition of subdivisions (a) and (c) to Guidelines section 15180, and the proposed amendment of subdivision (b) of Guidelines section 15180, implement and make specific the provisions of SB 649 (Chapter 625, Statutes of 2002), amending PRC section 21090. As amended, PRC section 21090 provides that an EIR for a redevelopment project may be a master, program or project EIR, and the EIR must state the type of EIR that is being prepared for the redevelopment project. The proposed addition of subdivisions (a) and (c) to Guidelines section 15180, and the proposed amendment of subdivision (b) to Guidelines section 15180, reflects the changes to PRC section 21090.

The Resources Agency is also proposing to remove the discussion section that follows this Guideline because the proposed amendments make this discussion section outdated. These discussion sections are potentially sources of confusion, because it is not clear whether the discussion sections are part of the Guidelines or have any legal effect. Therefore, the Resources Agency has decided to remove these discussion sections when the Guideline section to which they refer is changed. Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed amendment and additions is PRC section 21083.

## **15186. SCHOOL FACILITIES**

Guidelines section 15186 provides special CEQA requirements that apply to school projects and projects located near schools.

The proposed amendments to subdivisions (b), (c), and (e) of Guidelines section 15186 implement and make specific the provisions of SB 945 (Chapter 689, Statutes of 2004) and SB 352 (Chapter 668, Statutes of 2003). SB 945 amended PRC section 21151.4 to change the term “acutely hazardous materials” to “extremely hazardous substances.” SB 352 amended PRC section 21151.8 to require an EIR or negative declaration to disclose specified information relative to the location of a proposed school site and precludes a lead agency from approving certain school projects in specified locations unless certain findings are made. The proposed amendments to subdivisions (b), (c), and (e) to Guidelines section 15186 reflects the changes made to PRC sections 21151.4 and 21151.8.

The Resources Agency is also proposing to remove the discussion section that follows this Guideline because the proposed amendments make this discussion section outdated. These discussion sections are potentially sources of confusion, because it is not clear whether discussion sections are part of the Guidelines or have any legal effect. Therefore, the Resources Agency has decided to remove these discussion sections when the Guideline section to which they refer is changed. Additionally, non-substantive changes to the numbering within this section are proposed.

The authority for the adoption of the proposed amendments is PRC section 21083.

## **15190.5. DEPARTMENT OF DEFENSE NOTIFICATION REQUIREMENT** **[New Section]**

The proposed new section implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), which added PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, a notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern.

The proposed addition of Guidelines section 15190.5 reflects the language set forth in new PRC section 21098.

The authority for the adoption of the proposed new section is PRC section 21083.

## **15191-15196. ARTICLE 12.5 EXEMPTIONS FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS** **[New Article]**

The proposed new Article 12.5 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002) and AB 677 (Chapter 837, Statutes of 2003). SB 1925 added PRC sections 21159.20-21159.26, which set forth statutory exemptions from CEQA for agricultural employee housing, low-income housing (affordable housing), and residential infill projects under specified circumstances. AB 677 amended PRC section 21152.1 to require that an agency notify OPR when it determines that a project is exempt from CEQA under one of the preceding exemptions.

Article 12.5 organizes and sets forth new Guidelines sections 15191-15196 which implement PRC sections 21159.20-21159.26, as discussed in more detail below.



The authority for the adoption of the proposed new article is PRC section 21083.

#### **15191. DEFINITIONS** **[New Section]**

The proposed addition of Guidelines section 15191 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002). Among other things, SB 1925 added PRC sections 21159.20-21159.26, which set forth statutory exemptions from CEQA for agricultural employee housing, low-income housing (affordable housing), and residential infill projects under specified circumstances.

The proposed Guidelines section 15191 sets forth the definitions of terms used in the regulations implementing the new statutory exemptions enacted by SB 1925. These definitions are set forth in PRC section 21159.20, as well as in various subdivisions of PRC sections 21061.3, 21064.3, 21065.3, 21087, and 21159.21-21159.24.

The authority for the adoption of the proposed new section is PRC section 21083.

#### **15192. THRESHOLD REQUIREMENTS FOR EXEMPTIONS FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS** **[New Section]**

The proposed Guidelines section 15192 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above. The proposed addition of Guidelines section 15192 establishes the threshold requirements for the exemptions identified in this Article and reflects the language set forth in new PRC sections 21159.21.

The authority for the adoption of the proposed new section is PRC section 21083.

#### **15193. AGRICULTURAL HOUSING EXEMPTION** **[New Section]**

The proposed Guidelines section 15193 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above. The proposed addition of Guidelines section 15193 establishes specific requirements for the agricultural housing exemption and reflects the language set forth in new PRC section 21159.22.

The authority for the adoption of the proposed new section is PRC section 21083.

#### **15194. AFFORDABLE HOUSING EXEMPTION** **[New Section]**

The proposed Guidelines section 15194 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above. The proposed addition of Guidelines section 15194 establishes specific requirements for the affordable housing exemption and reflects the language set forth in new PRC section 21159.23.

The authority for the adoption of the proposed new section is PRC section 21083.

#### **15195. RESIDENTIAL INFILL EXEMPTION** **[New Section]**

The proposed Guidelines section 15195 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above. The proposed addition of Guidelines section 15195 establishes specific requirements for the residential infill exemption and reflects the language set forth in new PRC section 21159.24.

The authority for the adoption of the proposed new section is PRC section 21083.

#### **15196. NOTICE OF EXEMPTION FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS** **[New Section]**

The proposed Guidelines section 15196 implements and makes specific the provisions of AB 677 (Chapter 837, Statutes of 2003), which added PRC section 21152.1. PRC section 21152.1 requires a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The proposed addition of Guidelines section 15196 reflects the language set forth in new PRC sections 21152.1.

The authority for the adoption of the proposed new section is PRC section 21083.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Resources Agency has made the following initial determinations concerning the proposed changes to the Guidelines:

#### **Mandates on Local Agencies and School Districts**

The Resources Agency has initially determined that the proposed changes to the Guidelines will not impose a mandate on local agencies or school districts. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action impose mandates on local agencies and school districts. Among other things, PRC section 21098 (reflected in proposed changes to Guidelines sections 15072, 15082, 15087, and 15190.5) requires a lead agency to submit additional notices to military agencies under specified circumstances. PRC section 21151 (reflected in Guidelines sections 15061 and 15074) requires a local agency's elected decisionmaking body to hear an appeal under certain circumstances. SB 610 (reflected in Guidelines section 15155) revises the requirements imposed on cities and counties to prepare or obtain certain analyses relating to water availability, and requires the inclusion of these analyses in any environmental document prepared for the project, under specified circumstances. PRC sections 21151.4 and 21151.8 (reflected in Guidelines section 15186) require certain public agencies and certain school districts to make a number of specified determinations relating to air quality in the vicinity of a school or proposed school site before approving certain projects. The proposed changes to the Guidelines merely reflect these legislative mandates. The proposed action clarifies and updates the Guidelines to be consistent with these recent legislative enactments, but does not create any new requirements. Therefore, the proposed action does not itself impose a mandate on local agencies or school districts.

## **Costs or Savings to Local Agencies and School Districts or Federal Funding to the State of California**

The proposed changes to the Guidelines do not impose additional requirements or costs on local agencies and school districts. As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could impose costs on local agencies and school districts. However, the proposed changes to the Guidelines merely reflect these legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself impose any costs on local agencies or school districts. The proposed changes do not result in any savings to local agencies and school districts, and do not result in any costs or savings in federal funding to the state.

## **Significant Adverse Economic Impacts on Business**

The Resources Agency has initially determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could have an economic effect on business. Among other things, project proponents could incur additional costs in assisting lead agencies to comply with SB 610 (reflected in Guidelines section 15155), which revises the requirements imposed on cities and counties to prepare or obtain certain analyses relating to water availability and to require the inclusion in these analyses in any environmental document prepared for the project, under specified circumstances. In addition, project proponents could incur additional costs in assisting lead agencies to comply with PRC sections 21151.4 and 21151.8 (reflected in Guidelines section 15186), which require certain public agencies and certain school districts to make a number of determinations relating to air quality in the vicinity of a school or proposed school site before approving certain projects. However, the proposed changes to the Guidelines merely reflect these legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not impose any new requirements. Therefore, the proposed action does not itself have a significant, statewide adverse economic impact directly affecting business.

## **Cost Impacts on a Representative Person or Business**

The Resources Agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action because the proposed changes clarify and update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but do not impose any new requirements. As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could impose costs on project proponents. However, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself impose any costs on a representative private person or business.

## **Effect on Housing Costs**

The Resources Agency has made an initial determination that the changes proposed in this action will not have an adverse impact on housing costs because the proposed changes clarify and update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not impose any new requirements. As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could impose costs on project proponents. However, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action will not itself have an adverse impact on housing costs.

## **Assessment of Potential to Create or Eliminate Jobs or Businesses within the State of California**

The Resources Agency has assessed the potential for the proposed action to adversely affect California business enterprises and individuals, including whether it will affect the creation or elimination of jobs or the creation, elimination or expansion of businesses, as required by subdivision (b) of Government Code section 11346.3. The proposed action is not expected to have a positive or adverse effect on the creation or elimination of jobs or businesses within California because the proposed changes clarify and update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but do not impose any new requirements. For the same reason, the Resources Agency has also initially concluded that the proposed changes will not affect the expansion of businesses currently doing business within the state. Finally, the proposed action does not require any business to prepare a report.

As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could potentially affect project proponents. In addition, provisions of SB 610 (reflected in new Guidelines section 15155) may require a public water system to prepare a report. However, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself adversely affect California business enterprises and individuals or require any business to prepare a report.

The Resources Agency's complete Economic and Fiscal Impact Statement (Form Std 399) for the proposed action is part of the rulemaking file, and it is available from the Resources Agency contact persons named in this notice.

## **Effect on Small Businesses**

The proposed actions will not affect small business because the proposed changes clarify and update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but do not impose any new requirements. As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could potentially affect project proponents. However, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself adversely affect small businesses.

## **Economic and Fiscal Impact**

Pursuant to subdivision (a)(6) of section 11346.5 of the Government Code, the Resources Agency is required to provide "an estimate, prepared in accordance with instructions adopted by the Department of

Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state. . . .”

The Resources Agency has provided this estimate in its complete Economic and Fiscal Impact Statement (Form Std 399) for the proposed action. This Economic and Fiscal Impact Statement is part of the rulemaking file, and is available from the Resources Agency contact persons named in this notice. The Form Std 399 provides information regarding costs or savings to any state agency, local agency or school district and cost or savings in federal funding to the state. As stated within Form Std 399, the Resources Agency has initially determined that most of the proposed changes in this action have no or de minimis impacts on state agencies, local agencies or school districts. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action impose costs on public agencies. The Resources Agency is not aware of any savings that would result from any of the statutory changes enacted by the Legislature that are reflected in this proposed action. However, with respect to any costs or savings, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself impose any costs on, or result in any savings for, any state agency, local agency or school district. Moreover, as stated within Form Std 399, the Resources Agency has initially determined that the proposed action does not result in any cost or savings in federal funding to the state.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with subsection 11346.5(a)(13) of the Government Code, the Resources Agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## **INQUIRIES AND ADDITIONAL INFORMATION INCLUDING AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Inquiries relating to the proposed administrative action may be directed to Sandra Ikuta, Deputy Secretary and General Counsel, or Mary Akens, Assistant General Counsel, at (916) 653-5656.

The Resources Agency has prepared an Initial Statement of Reasons for the proposed action that provides an explanation of the purpose and justification for the proposed action. Anyone may view and print a copy of the statement or the text of the proposed changes by accessing the following page on the Resources Agency’s Internet website: [www.ceres.ca.gov/ceqa/index.html](http://www.ceres.ca.gov/ceqa/index.html). Copies of the initial statement and text of the guidelines are also available upon request from Mary Akens, Assistant General Counsel, at (916) 653-5656. The entire rulemaking file is available for public inspection at 1416 Ninth Street, Suite 1311, Sacramento, California 95814.

The Resources Agency will post the Final Statement of Reasons and any future notices related to the proposed action on the Agency’s Internet website [www.ceres.ca.gov/ceqa/index.html](http://www.ceres.ca.gov/ceqa/index.html). Anyone wishing to receive future notices related to the proposed action and/or receive a copy of the Final Statement of Reasons once it has been prepared should submit a written request containing his or her postal mailing address to Mary Akens, Assistant General Counsel, Resources Agency, State of California, 1416 Ninth Street, Suite 1311, Sacramento, California 95814. These requests can also be submitted by fax at (916) 653-8123.

If the Resources Agency makes changes in the text of any proposed changed guideline, from that which was originally made available, the revised text will be available to the public at least fifteen (15) days prior to the date when the Resources Agency considers the proposed guidelines for adoption, amendment, or repeal, unless the change is “(1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.” (Govt. Code, sec. 11346.8, subd. (c).) As further stated in section 11346.8, subdivision (c) of the Government Code:

“If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons. . . .”

(Govt. Code, sec. 11346.8, subd. (c).) The Resources Agency will comply with these requirements. This information will also be made available on the Resources Agency website at [www.ceres.ca.gov/ceqa/index.html](http://www.ceres.ca.gov/ceqa/index.html).

### **PLAIN ENGLISH DETERMINATION AND AVAILABILITY OF TEXT**

The proposed final guidelines were prepared pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2, subdivision (a)(1). The proposed changes to the guidelines are considered non-technical and were written to be easily understood by the parties that will use them. The purpose of the proposed changes to the Guidelines is to interpret the requirements of CEQA and to provide a comprehensive point of reference for those who are affected by CEQA’s mandates, both in government and the private sector. Specifically, the proposed changes will make it more clear what lead agencies and project applicants must do to comply with CEQA.

The text of the proposed changes to the Guidelines has been drafted, and is available in plain English. The text is available through the contact address and telephone number listed herein or on the CEQA website at [www.ceres.ca.gov/ceqa/index.html](http://www.ceres.ca.gov/ceqa/index.html).